IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1989 OF 2005

Ram Shankar Gupta,]
of Mumbai, Age 54 years,]
Occ: Government approved Contractor &]
Builder, carrying on business as]
the sole proprietor in the name and]
style of M/s. R.S. Gupta & Co., and]
having his office at Shop Nos. 11 & 12,]
Shivgiri Building No. 1, Champa Zanti]
Co-operative Housing Society Ltd.,]
P.L. Lokhande Marg, Govandi,]
Mumbai 400 043] ...Petitioner

Versus

The Maharashtra Housing &]
Area Development Authority,]
a statutory body under]
the MHADA Act, having its office]
at Griha Nirman Bhavan, Bandra (E),]
Mumbai 400 051] ...Respondent.

Mr. A. N. Maniyar for the Petitioner

Mr. R. M. Sawant, Government Pleader, for the Respondent.

CORAM: DALVEER BHANDARI, C.J. &
S. J. VAZIFDAR, J.
DATE: SEPTEMBER 13, 2005.

ORAL JUDGMENT (Per Dalveer Bhandari, C.J.):-

1. The petitioner, who is carrying on business as contractor and builder, has filed this petition with the prayer that the respondent be directed to pay to the petitioner an amount of Rs.74,79,081/- with interest.

2. The respondent had invited tenders for Urban Renewal Scheme at Building No. 23-I to 23-M, Shroff Building, Plot No. 717, Keshavrao Borkar Marg, known as “Dhaku Prabhu Wadi”, E Ward, Bombay. The estimated cost of the said project was Rs.1,74,88,326/- and the time limit was 18 months. The petitioner applied for the same. The petitioner stated that his offer was the lowest. The respondent, by its letter dated 1st November, 1994, informed the petitioner that his lowest offer for the said work, amounting to Rs.1,74,88,326/-, which was at par to the estimated cost, had been accepted by the Competent Authority. The actual date of start of the said work was to be reckoned with effect from 21st November, 1994 and completed within the period of 18 months i.e. on or before 20th May, 1996.

3. By his letter dated 3rd February, 1995, the petitioner informed the respondent that there were huts existing on the site and no digging of

pits for foundation was possible without danger to human life. As such, he had temporarily stopped further work on the site. He requested the respondent to hasten the work of clearing of the site of encroachments and consider that delay in completion of the work project while granting extension of time. The respondent moved the Court for clearing the encroachments. On 18th May, 1995, finally, all the encroachments of the hutments were cleared and the petitioner started the work from 22nd May, 1995. On or about 15th September, 1995, a well was discovered on the site, which was affecting the foundations. There was discussion between the Deputy Chief Engineer and the Consulting Engineer to that effect. The well was 25 feet in diameter and 25 feet in depth approximately. By letter dated 8th January, 1996, the respondent informed the Consulting Engineer that his proposal for filling the existing well at the site of the work had been approved by the Competent Authority and he was directed to get the work executed under his personal supervision. The Consulting Engineer instructed the petitioner, by his letter dated 13th January, 1996, to carry out the work of filling the well as per its letter dated 23rd November, 1995. The petitioner, by his letter dated 25th April, 1996, requested the respondent to grant the extension of time to complete the project up to 22nd May, 1997. Ultimately, the respondent, by its

letter dated 7th February, 1998, informed the petitioner to start the work of the filling of the well in the manner stated therein. Further extensions were given to complete the work till 30th November, 1999. Seeing the complicated work involved, the petitioner, by his letter dated 18th November, 1999, requested the respondent to extend time up to 30th June, 2000. The respondent, by its letter dated 17th August, 2000, directed him to pay the revised extra water charges and all other charges to the Municipal Corporation urgently for getting the water connection. The petitioner was given extension of time from time to time, and the said work was completed on 31st March, 2000 and all the tenants were allotted tenements and the maintenance period also expired on 30th September, 2000 from the date of completion i.e. 31st March, 2000.

4. The petitioner had, by his letters dated 25th August, 2001 and 23rd January, 2002 addressed to the respondent, explained the reasons for the delay for which he was not at all responsible and demanded that he should be paid the revision rate at the same year D.S. Rate (Department Schedule Rate).

5. According to the petitioner, he is entitled for compensation of the

balance amount of Rs.74,79,081/-.

6. It may be pertinent to mention that the petitioner had approached this Court by filing a writ petition No. 915 of 2005, which came up for admission hearing before the Bench of Honourable Shri Justice H.L. Gokhale and Honourable Shri Justice S. C. Dharmadhikari. Mr. Maniyar, the learned Counsel for the petitioner, who appeared before Their Lordships, had withdrawn the writ petition with leave to file an appropriate suit. The Court allowed the petitioner's prayer and the petitioner was permitted to withdraw the petition with liberty to file a suit.

7. Instead of filing a civil suit, the petitioner has again filed the present writ petition. We fail to comprehend, after having withdrawn the writ petition, how the petitioner can file the writ petition again, instead of filing a civil suit. In any event, in this matter, the petitioner is merely claiming compensation of Rs..74,79,081/-. The appropriate remedy, if any, for the petitioner is by filing a civil suit. This was the clear understanding of the petitioner also when he had withdrawn the earlier petition, No. 915 of 2005.

8. In our considered opinion, this petition is a total abuse of the process and we deem it appropriate to dismiss it with costs quantified at Rs.10,000/- to be paid to the Chief Minister's Relief Fund (National Calamity) within four weeks from today and the petitioner would file a receipt of the same before the Prothonotary and Senior Master of this Court. We order accordingly.

CHIEF JUSTICE

S. J. VAZIFDAR, J.